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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|------------------------|--------------------------|------------------------|
| 10/695,283 | 10/28/2003 | Robert Richard Dykstra | 9086M | 3960 |
| 27752 7590 07/30/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224 | | | EXAMINER MOSS, KERI A | |
| | | | ART UNIT 1743 | PAPER NUMBER |
| | | | MAIL DATE 07/30/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/695,283 | Applicant(s) DYKSTRA ET AL. | |
| | Examiner Keri A. Moss | Art Unit 1743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6-9,12,13 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-9,12,13 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment filed May 10, 2007 is hereby acknowledged. Claims 1,6-9,12,13 and 16 are pending.

Terminal Disclaimer

2. The terminal disclaimer filed on May 3, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patents granted on applications 10/695282, 10/698309, 10698871 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Amendment

3. Applicant's amendments have overcome the objections under 37 CFR 1.75(c). These objections are withdrawn.

Applicant's amendments have overcome the rejections under 35 USC 112, 2nd paragraph and these rejections have been withdrawn.

The rejections under 35 USC 102 established in the previous Office action have been withdrawn and new grounds of rejection are established in light of applicants' amendments.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims **1, 6-9, 12-13 and 16** rejected under 35 U.S.C. 102(e) as being anticipated by Hood (US Pub 2002/0058015 A1). Hood teaches a non-encapsulated benefit agent delivery system comprising a water-insoluble polymer particle [0027] and a benefit agent [0020] wherein the polymer particle comprises at least one cationic monomer and one or more non-cationic monomers [0027]. The polymer and the benefit agent are non-polymerically associated in a liquid matrix [0027]. The RF exhibited by the benefit agent is inherently at least about 1.5 as the benefit agent is one used by applicant in the instant invention. The polymer particle inherently has a first affinity for a low kovats index perfume raw material having a kovats index of from about 1000 to about 1400 and a second affinity for a high kovats index perfume raw material having a kovats index of greater than about 1700, the first affinity being at least about 2 times greater than the second affinity as measured by Affinity Test Protocol III, as the polymer particle is made as taught by applicants in the instantly claimed invention. The LKI perfume raw materials collectively provide a first Average Response Factor (ARF_{LKI}) and the HKI perfume raw materials collectively provide a second Average Response Factor (ARF_{HKI}); the perfume polymeric particle having a ratio of ARF_{LKI}/ARF_{HKI} of at least about 1.2 (Examples 13 and 17).

Hood teaches a method for making a granular or liquid composition containing a non-encapsulated benefit agent delivery system comprising at least one cationic monomer and one or more non-cationic monomers to the matrix and adding a benefit agent selected from the group consisting of flavor ingredients and perfume raw materials and mixtures thereof to the matrix; wherein the polymer particle and benefit agent are added as separate, discrete components from different sources to form the benefit delivery system and are not polymerically associated in said system (Examples 13 and 17).

Claim Rejections - 35 USC § 102/103

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1, 6-9, 12-13 and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gould et al (USP 3,681,248). Gould teaches a non-encapsulated benefit agent delivery system comprising a water-insoluble polymer particle (paragraph bridging columns 1 and 2) and a benefit agent (column 3 lines 49-54) wherein the polymer particle comprises at least one cationic monomer (column 2 lines 44-65) and one or more non-cationic monomers

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(column 2 lines 30-45). The polymer and the benefit agent are non-polymerically associated in a granular matrix (see Examples). The RF exhibited by the benefit agent is inherently at least about 1.5 as the benefit agent is one used by applicant in the instant invention. The polymer particle inherently has a first affinity for a low kovats index perfume raw material having a kovats index of from about 1000 to about 1400 and a second affinity for a high kovats index perfume raw material having a kovats index of greater than about 1700, the first affinity being at least about 2 times greater than the second affinity as measured by Affinity Test Protocol III, as the polymer particle is made as taught by applicants in the instantly claimed invention. The LKI perfume raw materials collectively provide a first Average Response Factor (ARF_{LKI}) and the HKI perfume raw materials collectively provide a second Average Response Factor (ARF_{HKI}); the perfume polymeric particle having a ratio of ARF_{LKI}/ARF_{HKI} of at least about 1.2 (column 3 lines 44-65).

Gould teaches a method for making a granular or liquid composition containing a non-encapsulated benefit agent delivery system comprising at least one cationic monomer and one or more non-cationic monomers to the matrix and adding a benefit agent selected from the group consisting of flavor ingredients and perfume raw materials and mixtures thereof to the matrix; wherein the polymer particle and benefit agent are added as separate, discrete components from different sources to form the benefit delivery system and are not polymerically associated in said system (Examples 1-25).

Response to Arguments

11. Applicant's arguments with respect to claims 1,6-9,12,13 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keri A. Moss whose telephone number is 571-272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Primary Examiner

/Yelena G. Gakh/

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Keri A. Moss
Examiner
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KAM 7/23/07